

REISSUE PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Reissue Application of: Attorney Docket No. 1915.14US01

Kasner et al.

Application No.: 08/209,559 Examiner: M. Safavi

Filed: March 10, 1994 Group Art Unit: 3635

For: RIDGE CAP TYPE ROOF VENTILATOR

CONSENT OF ASSIGNEE TO CHANGE OF INVENTORSHIP AND REISSUE

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, David H. Lenzen, declare that:

1. I am authorized to act on behalf of the assignee, Liberty Diversified Industries, Inc.

2. The assignee owns the entire title and right to the above-identified U.S. Patent and photocopies of assignment documents and their Reel and Frame locations are disclosed in documents filed previously during these reissue proceedings.

3. I believe Gary P. Kasner, Mark S. Stoll, and Richard J. Morris to be the original, first, and joint inventors of the subject matter which is described and claimed in U.S. Patent 5,094,041, for which a reissue patent is sought to the invention entitled "RIDGE CAP TYPE

ROOF VENTILATOR," the specification of which was filed on March 10, 1994 as reissue application number 08/209,559 and was amended on August 8, 2000 and in the amendment filed concurrently herewith.

4. I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

5. I acknowledge the duty to disclose information which is material to the patentability of the above-referenced application as defined in 37 CFR § 1.56.

6. I believe the original patent to be wholly or partly inoperative or invalid without deceptive intent, by reason of a defective specification containing one or more claims which might be construed as indefinite, Claim 4, as allowed, can be construed as indefinite because it is not clear that "each of said vent parts defines a multiplicity of air passages communicating with said roof opening;" Claim 7, as allowed, could be construed as indefinite because Claim 7 does not clearly recite "at least one of said apertures disposed in each of said vent panels;" and Claim 8, as allowed, could be construed as indefinite because Claim 8 might be interpreted to contradictorily require that the pockets, defined by and extending at least partially through at least a one of the vent parts, be spaced apart from the roof ventilator interior region by the entire vent part.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 USC 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Date: 1-02-01

LIBERTY DIVERSIFIED INDUSTRIES, INC.

By: David H. Lenzen
David H. Lenzen
Executive Vice President

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on

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Date of Deposit

Wm Larry Alexander
Wm. Larry Alexander

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 5,094,041)
Issue Date: March 10, 1992)
Patentees: Gary P. Kasner and)
Mark S. Stoll)
Title: Ridge Cap Type)
Roof Ventilator)

PETITION FOR CORRECTION OF INVENTORSHIP OF PATENT (37 CFR §1.324)

This is a petition for correction of error in a nonjoinder of inventors in the above issued patent and it is respectfully requested that the PTO issue a certificate correcting the error.

Enclosed herewith is a statement of facts verified by the originally named inventors establishing when the error without deceptive intention was discovered and how it occurred, and a declaration by each actual inventor as required by 37 CFR §1.63.

Also enclosed is a written consent of the assignee of the entire right, title, and interest to the above entitled patent, including the underlying invention and application.

A check in the amount of \$130 is enclosed to cover the fee under 37 CFR §1.20(b). Please charge any additional fees or surcharges or credit any overpayment to

the deposit account of the undersigned firm of attorneys, Deposit Account 02-3732.

Date: 3/10/92

Respectfully submitted,

Gary P. Kasner and
Mark S. Stoll
by their attorneys

BRIGGS AND MORGAN
2200 First National Bank Building
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St. Paul, Minnesota 55101
(612) 223-6562

By 
Philip G. Alden, Reg. No. 32,189

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Kathy Thors
(Typed or printed name of person mailing paper or fee)

Kathy Thors
(Signature of person mailing paper or fee)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.:	5,094,041)	
)	
Issue Date:	March 10, 1992)	
)	
Patentees:	Gary P. Kasner and)	
	Mark S. Stoll)	VERIFIED STATEMENT
)	
Title:	Ridge Cap Type)	
	Roof Ventilator)	

VERIFIED STATEMENT OF FACTS

Being duly warned, the undersigned hereby states:

1. On or about January 20, 1994, Mr. Richard J. Morris, an employee of Liberty Diversified Industries, Inc. (LDI) and the General Manager of LDI's subsidiary Diversi-Plast Products, assignee of the above-referenced U.S. patent (Kasner '041 patent), ordered from a competitor through a distributor samples of a ridge cap type roof ventilator product believed to infringe the Kasner '041 patent. Those samples were received and forwarded to the undersigned counsel of record on February 4, 1994 who received them on February 8, 1994.

2. Upon reviewing those product samples, the undersigned counsel determined that the samples infringed some or all of claims 9-15 of the Kasner '041 patent, both literally and under the doctrine of equivalence.

3. Although claims 9-15 were infringed by the sample product, it was further determined by the undersigned counsel that other methods and structures could be used to simulate or achieve the patented arcuate route or achieve a functionally equivalent result, and that while these methods and structures would arguably be encompassed by

claims 9-15 of the Kasner '041 patent, an accused infringer could raise questions concerning claim interpretation or assertions of non-infringement in using such a structure or method, and further that alternate structures and methods could be utilized to achieve substantially the same result in substantially the same manner but which would arguably not be within a limited interpretation of the literal language of claim 9. As such, the Kasner '041 patent is believed to be partially inoperative for failing to claim all the subject matter that the inventors were entitled to claim as their invention.

4. The issue of inventorship of the arcuate routing recited in claims 9-15 of the Kasner '041 patent had been discussed at length prior to filing and during prosecution of the application, and subsequent to issuance of the Kasner '041 patent. The issue was discussed because Mr. Gary Sells asserted that he was a joint inventor of the center route, although he had not contributed to the conception or reduction to practice of the arcuate center route. Mr. Sells had suggested that the width of the straight center route shown in an earlier prototype be widened, but that was the extent of his contribution. Mr. Sells is the President of Cor-A-Vent, Inc., the manufacturer of the sample products discussed above that are believed to infringe the Kasner '041 patent.

5. On or shortly prior to July 18, 1993, LDI and the undersigned counsel realized that Mr. Sells may have been under the mistaken belief that the pending U.S. patent application was intended to claim the concept of a center route as shown in the Fiterman '813 patent, and the undersigned counsel wrote to Mr. Sells to set forth the correct interpretation regarding the claimed arcuate route and Mr. Sells' error in believing he was a joint inventor. The undersigned counsel requested that Mr. Sells respond with any contrary information or assertions.

6. No reply to that correspondence was received by the undersigned counsel, however it was learned through independent sources that the Sells '254 patent had issued on October 8, 1991 showing an arcuate center route in the drawing figures substantially identical to that shown in the Kasner '041 patent. The Sells '254 patent contained no written description in the specification, no enabling disclosure, no reference numerals, nor claims that were drawn to that arcuate route feature. As such, the undersigned counsel concluded that Mr. Sells had abandoned his asserted position of joint inventorship and that the original determination that Mr. Sells was not a joint inventor was in fact correct.

7. The original application was filed in the names of Gary P. Kasner and Mark S. Stoll. It was known by the undersigned counsel that Mr. Kasner had made inventive contributions to the conception and reduction to practice of the arcuate route and that both Mr. Kasner and Mr. Stoll had made inventive contributions to the other features and concepts disclosed and claimed in that application, although Mr. Stoll had and continues to have no first hand knowledge concerning inventorship of the arcuate route.

8. It was unknown to the undersigned counsel that Mr. Morris had also made inventive contributions to the conception of the arcuate route that were subsequently reduced to practice. At the time the application was filed Mr. Morris was not aware that some of the claims of the application were drawn to the arcuate route, but rather believed the application was directed to the general concept of a center route and other features such as the stacked apertures. Mr. Morris understood Mr. Kasner to have been at least partially responsible for the development and reduction to practice of the straight center route shown in the Fiterman '813 patent, and therefore did not realize that he

should be named as a joint inventor on the application since its subject matter was actually the arcuate center route, and he therefore made no such suggestion to Mr. Kasner, Mr. Stoll, or the undersigned counsel.

9. Due to an error by the undersigned counsel, the original claims of the application concerning the arcuate route were unintentionally drafted broadly enough to recite or encompass a non-arcuate or straight center route such as shown in the Fiterman '813 patent, as noted by the Examiner during prosecution, although it was understood by Mr. Kasner, Mr. Stoll, and the undersigned counsel at the time of filing the application that the claim language was intended to encompass or relate only to the arcuate route concept disclosed in the application. This error was discussed and corrected during prosecution. Consequently, at the time of filing and during prosecution, Mr. Kasner, Mr. Stoll, and the undersigned counsel believed the correct inventors had all been named.

10. In discussing claims 9-15 of the Kasner '041 patent in preparation for receiving the allegedly infringing product samples on February 4, 1994, and during further review of those claims in light of the allegedly infringing product samples and potential arguments that would raised by Mr. Sells or Cor-A-Vent regarding infringement and validity, Mr. Kasner, Mr. Morris, the undersigned counsel, and Mr. David E. Kohner (LDI's General Counsel) again discussed the issue of inventorship including the steps taken during and prior to reducing the invention recited in claims 9-15 to practice, as well as other arguably similar or non-infringing methods to obtain an equivalent result. Mr. Kasner and Mr. Morris then realized and conveyed to the undersigned counsel that Mr. Morris had contributed to the conception of the invention as claimed in issued claims 9-15, and should properly be a named inventor. These discussions took place during the

first two weeks of February, 1994. Inventorship as to the subject matter claimed in the remaining claims and subsequent continuation application remains correct and proper.

11. This error arose without any deceptive intention on the part of Mr. Kasner or Mr. Stoll, as well as Mr. Morris, Mr. Kohner, or the undersigned counsel.

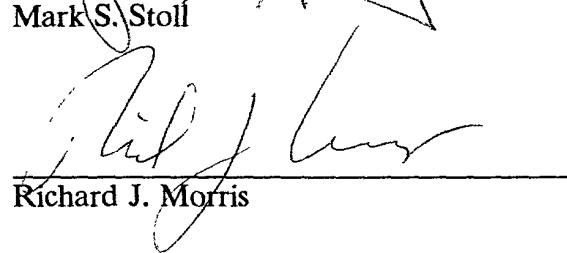
12. The undersigned hereby declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of any application or patent issuing thereon.

Date: _____

Gary P. Kasner


Mark S. Stoll

Date: 3-10-94


Richard J. Morris

Date: 3-10-94


Philip G. Alden
Reg. No. 32,189

Date: 3/10/94

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Kathy Thors
(Typed or printed name of person mailing paper or fee)

Kathy Thors
(Signature of person mailing paper or fee)

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Date: 3/10/94



Gary P. Kasner

Gary P. Kasner

Date: _____

Mark S. Stoll

Date: _____

Richard J. Morris

Date: _____

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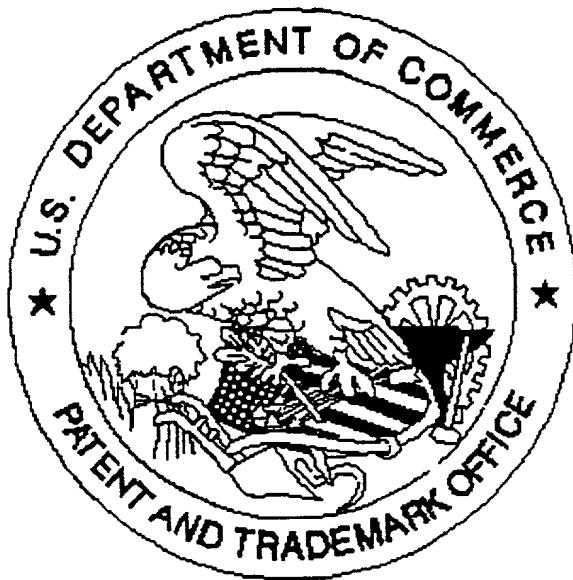
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